

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



MAR 21 2006

Reply to Attn of:

Science Mission Directorate

TO: Distribution
Attn: Science Mission Directorate IPAs

FROM: Associate Administrator for Science

SUBJECT: Procedures for Preventing Financial Conflicts of Interest for
Intergovernmental Personnel Act (IPA) Employees

The IPA permits assignments to and from universities. IPA assignees serve within Science Mission Directorate (SMD) in all capacities that civil servant scientists do. The criminal ethics and financial interest statutes (specifically 18 USC §208) that apply to civil servants also apply to IPAs serving in SMD. The IPA assignee's continuing employment relationship with his/her home institution is a potential felony conflict of interest. This conflict most commonly arises when a proposal is submitted by the IPA's home institution to a NASA program that the IPA is involved with.

It is in the best interest of both SMD and the IPA assignee to avoid conflicts of interest while still permitting the IPA assignee to carry out his/her assigned responsibilities for NASA. Therefore the SMD in consultation with the Office of General Counsel, has established procedures for preventing financial conflicts of interest for IPA assignees.

In order to prevent financial conflicts of interest for IPA employees, I am directing all IPA employees assigned to SMD, and the civil servants who work with them, to follow the procedures in the enclosed SMD policy document.

All IPA employees must be trained in avoiding financial conflicts when they are assigned to SMD. Annual refresher training is recommended for all IPA employees and all civil servant scientists who work with them.

Any questions concerning these procedures should be directed to Dr. Paul Hertz, Chief Scientist.

A handwritten signature in dark ink, appearing to read "M. L. Cleave". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mary L. Cleave

Enclosure

SCIENCE MISSION DIRECTORATE POLICY

PREVENTING FINANCIAL CONFLICTS FOR IPA EMPLOYEES

SMD POLICY DOCUMENT 05 (SPD-05)

Revised by Paul Hertz, Assistant Associate Administrator for Science, June 7, 2005

Reviewed by Rebecca Gilchrist, Ethics Team, Office of General Counsel, June 7, 2005

(Plan) & December 7, 2005 (Appendix)

SPD-05 has also been referred to as “Mitigation Plan Zero.”

Converted to SPD format, February 6, 2006

The Intergovernmental Personnel Act (IPA) permits assignments to and from universities. IPA assignees serve within the Science Mission Directorate (SMD) in all capacities that civil servant scientists do. The criminal ethics and financial interest statutes (specifically 18 USC §208) apply to IPAs. The IPA assignee’s continuing employment relationship with his/her home institution is a potential felony conflict of interest.

This document contains the SMD mitigation plan for using an IPA assignee to help manage a research portfolio. The Appendix contains the presentation charts that are used during the standard training module for IPA assignees. All IPA assignees must be trained in avoiding financial conflicts. Annual refresher training is recommended for all IPA assignees and all cognizant scientists who work with them.

Preventing Financial Conflicts of Interest for Intergovernmental Personnel Act (IPA) Employees in the Science Mission Directorate

1. In competitions for smaller awards, such as offered in the Research and Analysis programs solicited in the ROSES omnibus NRA, IPA’s are allowed to organize the entire competition’s reviews. These solicitations are for awards of \$25,000 or more and generally are won by about one-quarter to one-third of those who propose.
2. The selection is based predominantly on the findings of the peer review panel, and the success rate is reasonably high (typically >25%). Proposals to a particular program span a broad range of investigation subjects and methods. Each proposal is considered independently, and proposals are not compared by the peer review panel. Proposals are evaluated against a common standard of excellence.
 - a. Because each proposal is evaluated against an external standard, because acceptance rates are high, and because proposals are not proposing similar investigations, the consideration of each proposal may be considered a separate matter.
 - b. Because success rates are high, and because proposals do not compete directly with each other, the IPA does not have a direct and predictable impact on the final selection.

3. Further mitigations are undertaken to ensure that the IPA does not have a direct and predictable impact on proposals with which there is an ethical conflict and on the final selection:
 - a. If there are proposals from the IPA's home institution, a Cognizant Civil Servant (CCS) or a non-conflicted IPA (NCIPA) chooses reviewers for those proposals. The CCS/NCIPA, hereafter the cognizee¹, can be a supervisor or a fellow HQ discipline scientist.
 - b. The IPA oversees the deliberations of the review panel. When the panel discusses proposals from the IPA's home institution, the cognizee provides oversight of the panel with the IPA excluded from the room.
 - c. Proposals in direct competition (similar objectives, similar methodologies, etc.) with proposals from the IPA's home institution are treated as a conflict and are handled by a cognizee.
4. The panel is instructed to take any complaints or discomforts regarding the conduct of the review to the cognizee or the IPA's supervisor. The cognizee is responsible for overseeing and approving all activities conducted by the IPA regarding the peer review. This provides access to the appropriate expertise (mentoring) and oversight by both the cognizee and the panel itself.
5. The cognizee will consider the reports from the review panel concerning all conflicted proposals. The cognizee will make a selection recommendation to the Selection Official independent of the selection recommendation for the rest of the program, and without any involvement from the IPA.
6. The Selection Official will consider both selection recommendations (the recommendation for the bulk of the proposals prepared with the involvement of the IPA, and the recommendation for conflicted proposals prepared solely by the cognizee) when making selections.
7. Once the selection decision has been made, only proposals (now incipient awards) from the IPA's home institution provide a conflict for the IPA. The cognizee will handle all reviews, approvals, and directives associated with any awards to the IPA's home institution. The IPA's involvement with these awards will be limited to identifying circumstances where the cognizee must take an action on an award to the IPA's home institution, e.g. sorting such documents from the rest of the program and directing them to the cognizee.

¹ This is not a real word.

8. IPA's also manage programs for SMD other than the basic and applied research program. This includes serving as a program scientist or program executive. An IPA may not manage a program at the IPA's home institution, nor a program for which the IPA's home institution is the prime contractor to NASA.



Financial Conflicts of Interest for Intergovernmental Personnel Act (IPA) Employees in the Science Mission Directorate

December 2005

Approved: Paul Hertz, AAA/Science, SMD
Rebecca Gilchrist, Office of General Counsel

IPA Conflicts of Interest / SMD

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Ethics Conundrum #5*

- Carmela, an Earth and planetary sciences professor at the University of Georgia, has been detailed to NASA under an Intergovernmental Personnel Act (IPA) Agreement. Her detail at NASA includes responsibility as the Program Officer for a program element in the ROSES NASA Research Announcement. Upon receipt of proposals, it becomes evident that her home institution has submitted a proposal. When she becomes aware of this situation, what should she do?

* From the 2005 Headquarters mandatory ethics briefing

IPA Conflicts of Interest / SMD

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Disqualifying Financial Interests 18 U.S.C. § 208

- Basic Rule: Employees must not act officially on matters which may affect their personal financial interests
- Complex rule
- Goal is for employees to be objective in performing their duties
- Goal is accomplished through disqualification

IPA Conflicts of Interest / SMD

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18 U.S.C. § 208

- Financial Conflict of Interest statute (18 USC § 208) states
- If a Federal employee (or an IPA)
 - “participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest”
- Then he is subject to the penalties (18 USC § 216)
 - Up to 5 years in prison
 - Up to \$50,000 fine

IPA Conflicts of Interest / SMD

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18 U.S.C. § 208

- An employee is disqualified
 - must be recused
- from participating personally and substantially
 - personal: the employee did something
 - substantial: whatever they did was of significance to the matter
 - o includes decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise
- in any particular matter
 - particular matter is very broad
 - can be transactions, but can also be policy
 - o specifically includes solicitations and selections



18 U.S.C. § 208

- in which the employee, or anyone whose interests are imputed to the employee,
 - includes spouses and minor children
 - includes outside employers
- has a financial interest,
- if the particular matter will have a direct and predictable effect on that interest.
- In other words, an employee may not work on a particular matter in which the employee, spouse, or outside employer has a financial interest.



Intergovernmental Personnel Act

- Permits assignments to and from universities
- The criminal ethics and financial interest statutes (specifically 18 USC § 208) apply to IPAs
- Assignee's continuing employment relationship with home institution is a potential felony conflict of interest



IPA Conflicts of Interest

- Rule: Assignees may not participate in particular matters that their university has an interest in
 - includes making decisions or recommendations, giving advice, or influencing outcomes
 - includes both technical and business decisions
- If assignee's university is involved in a program or project, most technical, business, and program management activities will be prohibited
- Many IPA conflict anomalies result from the duties contemplated by the assignment
 - example: assignees from Caltech working on JPL missions



SMD Policy for IPAs

- The Science Mission Directorate (SMD) has a mitigation plan for using an IPA to help manage a research portfolio.
 - Current plan finalized on June 7, 2005
 - Available in the "Science Coordination" and in the "SMD Science Policies" folders on the SMD server
- IPAs may organize reviews for a competition.
- In general, evaluation of individual proposals may be considered separate matters.
- IPAs have a financial conflict of interest with
 - Proposals from their employer (home institution)
 - Proposals in direct competition with proposals from their employer
- Mitigations must be undertaken to ensure that the IPA does not participate "personally and substantially" in matters affecting proposals with which the IPA has a financial conflict.

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

- IPAs may organize reviews for a competition
- Evaluation of proposals may be considered separate matters
 - Success rate is reasonably high (>25%). Many proposals will be selected, and the evaluation of one proposal has no impact on the selectability of another proposal.
 - Selection is based predominantly on findings of peer review. Each proposal is considered independently and peer review does not compare proposals.
 - Proposals span a broad range of investigation subjects and methods and are not proposing similar investigations. NASA solicited and NASA will select proposals that span this range.

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

- If there are proposals with which the IPA has a financial conflict
 - Proposals from home institution
 - Proposals in direct competition (similar objectives, similar methodologies – selection of one does affect selection of the other)
- Then mitigations must be undertaken to ensure that the IPA does not have an impact on the evaluation or on the selection decision for those proposals
 - Must identify a cognizant civil servant or a cognizant non-conflicted IPA (hereafter the cognizee‡) to handle all matters that affect conflicted proposals

‡ Note: I made that word up. PH

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

- Oversight
 - Cognizee is responsible for identifying proposals with which the IPA is conflicted (hereafter conflicted proposals)
 - Cognizee is responsible for overseeing and approving IPA activities
 - Any concerns by peer reviewers should be brought to the cognizee or the IPA's supervisor (usually the Division Director and Selecting Official)
 - All actions to mitigate conflicts must be documented in the Portfolio Plan/Selection Statement that is signed by the Selecting Official
- Peer Review
 - Cognizee must select reviewers for conflicted proposals
 - IPA must leave the room, and cognizee takes over, when conflicted proposals are reviewed

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

- Selection
 - IPA may formulate a selection recommendation for non-conflicted proposals
 - Cognizee must formulate a selection recommendation for all conflicted proposals without any input from the IPA
 - Selecting Official will consider both selection recommendations when making selection decisions
- Awards
 - IPA may not sign letters for conflicted proposals
 - After selection, IPA is conflicted only with awards to his home institution (not with awards based on competing proposals)
 - Cognizee must handle all reviews, approvals, and directives for awards to the IPA's home institution
 - IPA may be single POC for all awards in program, but must pass to cognizee all matters concerning awards to home institution

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

An Example

- IPA writes the ROSES program element
 - No problem. This is policy. Does not have a "direct and predictable effect" on anyone, including the IPA's employer.
- NOIs are received. There is one from the IPA's employer.
 - IPA should not act on the NOI from the employer.
 - Cognizee must review NOIs to determine if there are any directly competing proposals which would also pose a potential financial conflict for the IPA.
 - IPA may use the other NOIs for planning purposes: size of peer review, number of meeting rooms, number of reviewers, breadth of subjects, definition of panel subject areas, etc.
 - IPA may identify tentative reviewers for non-conflicted proposals.
 - Cognizee must identify tentative reviewers for conflicted proposals.

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

- Proposals are received. There is one from the IPAs employer.
 - Cognizee must review proposals to determine if there are any directly competing proposals which also pose a potential financial conflict for the IPA.
 - IPA may identify reviewers for non-conflicted proposals.
 - Cognizee must identify reviewers for all conflicted proposals.
- At the Peer Review
 - The IPA may attend panel reviews of non-conflicted proposals.
 - The IPA must leave the room whenever a conflicted proposal is discussed.

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

- After the Peer Review
 - The IPA may finalize evaluations for non-conflicted proposals.
 - The cognizee must finalize evaluations for conflicted proposals.
 - The IPA may formulate a selection recommendation (select or decline) for any non-conflicted proposals. This may result in a portfolio plan and selection recommendation.
 - The portfolio plan must include a list of all conflicted proposals and a description of the mitigations taken to prevent the IPA from violating the financial conflict-of-interest statutes.
 - The cognizee must formulate a selection recommendation for all conflicted proposals.
 - Either the cognizee or the Selecting Official must combine the two selection recommendations and make final trade offs. The IPA may not be involved in combining these two selection recommendations.

IPA Conflicts of Interest / SMD

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SMD Policy for IPAs

- Post Selection
 - The IPA may sign letters for all non-conflicted proposals.
 - The cognizee must sign letters for selected proposals.
 - The IPA may be the technical officer for all awards except awards to the IPA's employer. The cognizee must be the TO for all awards to the IPA's employer.
 - The IPA may remain the POC for contacts concerning the program, such as receiving progress reports. However the cognizee must handle all activities dealing with the IPA's employer, such as reviewing progress reports and approving second year funding.



SMD Policy for IPAs

- IPAs also serve as a program scientists or program executives
- An IPA may not manage a program at the IPA's home institution, nor a program for which the IPA's home institution is the prime contractor to NASA



Sources for Advice

Paul Hertz (paul.hertz@nasa.gov; X0986)
AAA for Science, Science Mission Directorate

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